

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1176 of 2005(S/S)

Anand Swaroop
S/o Late Khushi Ram
R/o Jawahar Jyoti Damua Dhunga
Haldwani, District Naintial Petitioner

Versus

1. The U.P. State Co-operative Federation
Lucknow, through its
Managing Director
2. U.P. Managing Director
Co-operative Federation
Lucknow.
3. Registrar Co-operative Societies
U.P. Lucknow.
4. Uttaranchal State Marketing Federation
Dehradun, through its Managing Director
120, Old Nehru Colony, Dehradun
District Dehradun Respondents.

Shri J.C. Belwal, learned counsel for the petitioner.
Shri Ashish Joshi, learned counsel for respondents No.1 and 2.
Shri Subhash Upadyaya, learned counsel for respondent No.4.
Shri S.P.S. Panwar, Sr. Advocate with Smt. Bina Pande, learned standing
counsel for respondent No.3.

Hon'ble Prafulla C.Pant, J.

By means of this petition, the petitioner has sought writ in the nature of mandamus directing respondents to pay amount of gratuity, leave encashment allowance and other post retiral benefits along with interest claimed by him.

2. Heard learned counsel for the parties.
3. Brief facts of the case, as narrated in the writ petition are that the petitioner was appointed on 22.08.1985, as a worker on daily wages with Soyabeen

and Vanaspati Industry Halduchaur, till 31.12.2004 a unit of U.P. Co-operative Federation (for brevity herein after referred as P.C.F.). On completion of his services for five years, the petitioner was regularized as helper vide order dated 18.03.1993 (Annexure-2 to the petition) by P.C.F. (respondent No.2). On 31.03.2005, the petitioner got superannuated from the service. Meanwhile, after the creation of state of Uttaranchal, a new co-operative federation, known as Uttaranchal State Co-operative marketing Federation (for brevity herein after referred as C.M.F.), got established w.e.f. 01.1.2005 in the State of Uttaranchal. Before creation of said federation, a Memorandum of Understanding herein after referred as M.O.U.) was signed on 06.12.2004 (Annexure-4 to the petition) between P.C.F. and C.M.F. in respect of the employees of the federation transferred under C.M.F. that the amount of Provident fund, Gratuity, Leave Encashment allowance and other dues shall be paid by P.C.F. The petitioner on his superannuation, made representation to P.C.F. on 02.05.2005 and 20.05.2005 (Annexure-5 and Annexure 6 to the petition), for payment of his gratuity, leave encashment, provident fund and arrears of salary. Regarding arrears of salary, it has been stated in the petition that w.e.f. 01.01.1996, the pay scale of the post held by the petitioner, was revised from 750-12-870 Eb 1400 to Rs. 2550-55-2660-60-3200. The said difference of the salary due to the revision in pay scale, has not been paid to the petitioner.

4. A counter affidavit was filed on behalf of respondents No. 1 and 2, wherein it has been stated that

Soyabeen and Vanaspati Industry, Haldichaur, Nainital with its 193 employees was transferred from P.C.F. to C.M.F. Admitting, terms of M.O.U. on 06.11.2004, it is stated by respondents No. 1 and 2 that they are waiting for the guidelines from the Government of U.P. However, it is also stated in the counter affidavit, filed by two respondents that since the petitioner retired after creation of C.M.F., as such, the liability to make payment to post retirement benefits is on respondent no. 4 i.e. C.M.F. However, it is not denied by respondents No. 1 and 2 that earlier the project at Haldichaur was with P.C.F. and the petitioner worked with it. The date as to his retirement or applicability to his revised pay scale are also not denied. But it is stated that since the Soyabeen and Vanaspati Project at Haldichaur is not under C.M.F., as such P.C.F. is not liable to make payment claimed by the petitioner.

5. Respondents No. 4, has filed a separate counter affidavit in which the facts narrated in the writ petition are admitted and the claim of the petitioner is not denied but it has been stated that as per Clause (3) of M.O.U. (Annexure-4 to the writ petition), the liability to pay the dues claimed by the petitioner lies on P.C.F. except for the three months for which the petitioner worked with C.M.F. for the period 01.01.2005 to 31.03.2005. It is also stated in the counter affidavit of respondent No. 4 that the matter for payment of gratuity and other dues has also been referred to the Managing Director of C.M.F. on 07.06.2005.

6. Admittedly, the petitioner initially worked on daily wages with P.C.F. since 22.08.1985. It is also not disputed that his services got regularized vide order dated 18.03.1993. It is also not denied by the parties that the petitioner superannuated on 31.03.2005. It is also admitted fact between the parties that meanwhile, just three months before retirement of the petitioner, C.M.F. came into existence and the petitioner's services were transferred from P.C.F. to C.M.F.

7. The only question before this Court is whether the liability to pay the dues, claimed by the petitioner is of P.C.F. or C.M.F. None of the parties have denied that a M.O.U. (Annexure-4) was arrived at in which Managing Director (P.C.F.), Managing Director (C.M.F.), General Manager, Administration (P.C.F.) and General Manager, Finance (P.C.F.), were also signatories. In this M.O.U., in its Clause 3, P.C.F. has undertaken to pay amount of Provident Fund, Gratuity, Leave Encashment and security to the employees for the period they had worked for P.C.F. However, this undertaking has been given with the condition that the same would be done according to the Government Policy. In Clause 5 of said M.O.U. it is also clarified that C.M.F. would not be responsible for any financial liability for the period prior to the transfer of the assets by P.C.F. to C.M.F.

8. Having heard learned counsel for the parties and perusal of the recorded, it is clear that the respondents No. 1 and 2 on the one hand and respondent No. 4 on the other are shifting liability from one to another, a to the

payment of dues claimed by the petitioner. The petitioner has filed a M.O.U. (copy Annexure-4) in which officers of the P.C.F. and C.M.F. were signatories in the presence of Principal Secretary and Commissioner, Forest and Rural Development, Uttaranchal. Since the P.C.F. is an independent legal person and has undertaken in Clause 3 of the agreement (Annexure-4) to pay gratuity, provident fund, leave encashment and security for the period for which the employees had worked for them, the contention of learned counsel for respondent No.4, appears to be right that it has to make only proportional payment of dues for the period for which the employee has worked for C.M.F. Learned counsel for respondent No. 4, states that the proportional payment has already been made by said respondent to the Sr. Advocate for respondent No. 3, states that the Government of U.P. needs sometime to take the policy decision to provide guidelines in the matter. However, as far as the liability of respondents No. 1 and 2 is concerned the same cannot be denied as the Managing Director, P.C.F. was a signatory to the Annexure-4 to make the payment. There is no doubt that respondents No. 1 and 2, are liable to make payment of gratuity, provident fund, leave encashment and security amount to the petitioner for the period he has served P.C.F.

9. Therefore, the writ petition is allowed with the direction that respondents No. 1 and 2 shall make the payment of gratuity, leave encashment, arrears of pay to

the petitioner for the period he served P.C.F. till 31.12.2004. However, for the interest claimed by the petitioner, it is directed that if the payment is made within three months from today, no interest shall be paid to the petitioner. If respondents No. 1 and 2 fail to make the payment within three months from today, the petitioner shall be paid the amount due to him alongwith 6% interest per annum thereon, thereafter.

Dt.20.11.2006
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(Prafulla C. Pant, J.)